

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of)	RM-10586
Fixed and Mobile Broadband Access, Educational)	
and Other Advanced Services in the 2150-2162)	
and 2500-2690 MHz Bands)	
)	
Part 1 of the Commission's Rules – Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service)	
to Engage in Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74 of the)	WT Docket No. 02-68
Commission's Rules with Regard to Licensing)	RM-9178
in the Multipoint Distribution Service and in the)	
Instructional Television Fixed Service for the)	
Gulf of Mexico)	
)	
Promoting Efficient Use of Spectrum Through)	WT Docket No. 00-230
Elimination of Barriers to the Development of)	
Secondary Markets)	

To: The Commission

**CONSOLIDATED REPLY TO
OPPOSITIONS TO
PETITIONS FOR RECONSIDERATION OF
BELLSOUTH CORPORATION, BELLSOUTH WIRELESS CABLE, INC.
AND SOUTH FLORIDA TELEVISION, INC.**

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Summary

In this proceeding, it has become clear that the Commission on reconsideration should make several changes to its rules to further facilitate expeditious transitions to the new band plan and promote BRS and EBS as a competitive, nationwide advanced wireless service. *First*, the Commission should continue to permit incumbent Local Exchange Carriers to acquire and hold BRS and EBS spectrum rights. There is no factual evidence in the record or policy basis to impose categorical ownership restrictions. *Second*, the Commission should adopt Basic Trading Areas as the baseline for transitions. Numerous filings illustrate that the Commission's adoption of Major Economic Areas will delay, not encourage, transitions. *Third*, the Commission should adopt a "self-transition" period following the deadline for submitting Initiation Plans during which licensees that have not transitioned would have one final opportunity to transition to the new band plan. No party opposed this concept. *Fourth*, as advocated by a number of parties, the Commission should adopt self-effectuating transition "opt-out" criteria instead of requiring multichannel video programming distributors ("MVPDs") to seek and obtain a waiver from the Commission. *Fifth*, the Commission should afford proponents and licensees with access to more information in a timely fashion, with appropriate penalties for those that do not comply. This will provide additional discipline to the transition process. *Sixth*, the Commission should reject proposals that would needlessly increase its oversight of EBS spectrum capacity leases. In particular, the Commission should not limit the ability of lessors and lessees to freely negotiate lease terms of more than 15 years, license purchase options and post-termination equipment rights. *Seventh*, the Commission should make changes to certain technical rules,

including eliminating rules that would permit unlicensed devices to operate in the 2655-2690 MHz band.

In this Reply, BellSouth Corporation and its wholly-owned subsidiaries BellSouth Wireless Cable, Inc. and South Florida Television, Inc. (collectively, “BellSouth”) demonstrate how the Commission can resolve two outstanding issues. To the extent the Commission permits MVPDs to “opt out” of a transition without a waiver, BellSouth proposes a process by which licensees can certify eligibility to “opt out,” participate in the pre-transition data request and elect to “opt out” up until the 30th day of the Transition Planning Period. Thereafter, a licensee that “opts out” could participate in a transition either by initiating a transition itself before the deadline for submitting Initiation Plans or through a transition of its own channels during the self-transition period. This process affords licensees with additional flexibility to transition expeditiously even if they “opted out.”

BellSouth also proposes that the Commission establish a 30-day period following the filing of the Transition Notice during which potential proponents could express their willingness to be the proponent. If the interested parties are unable to agree on a transition plan within 90 days, the “proponent” would be the entity holding the most licensed and leased spectrum expressing its desire to participate in the transition. If that entity decided that it did not want to be the proponent, then the entity filing the Transition Notice would be declared the “proponent.” This proposal serves the public interest by eliminating potential counterproposals and disputes that could delay or create uncertainty throughout the transition process, and provides the entity with the most to gain an incentive to move forward if there is no negotiated transition agreement.

In addition to these proposals, BellSouth believes that the Commission should continue to permit pre-transition deployments, but should adopt measures that protect existing operations from interference. BellSouth also supports adopting three transition “safe harbors” to address EBS licensees that are entitled to more than one programming track, occupy fewer than four channels or operate as studio-to-transmitter links. BellSouth further urges the Commission to reject proposals that would require transition costs to be reimbursed before the beneficiary commences commercial operations. Bellsouth agrees that the Commission should modify its antenna height benchmarking rules to require an operator that exceeds the benchmark to resolve interference expeditiously.

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**CONSOLIDATED REPLY TO
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BellSouth Corporation and its wholly-owned subsidiaries BellSouth Wireless Cable, Inc. and South Florida Television, Inc. (collectively, "BellSouth") hereby reply to certain oppositions to petitions for reconsideration filed in this proceeding.

Discussion

1. The Commission should not prohibit ILECs from acquiring or holding BRS and EBS spectrum. BellSouth¹ and others² demonstrated that those petitioners³ urging the Commission to prohibit incumbent Local Exchange Carriers (“ILECs”) from holding or acquiring BRS and EBS spectrum rights presented no statutory, regulatory, policy or factual basis to justify such an *a priori* restriction. Because no party supported the petitioners’ proposal and there is no evidence in the record for such restrictions, the Commission cannot and should not preclude ILECs from acquiring or holding BRS and EBS spectrum.

2. The Commission should not reinstate the 15-year cap on EBS leases. A number of parties⁴ agreed with BellSouth⁵ that the Commission should not adopt CTN/NIA’s proposal to reinstate the 15-year limit on the maximum term for EBS

¹ See BellSouth Consolidated Opposition to Petitions for Reconsideration (“BellSouth Opposition”) at 2-7.

² See Blooston, Mordkofsky, Dickens, Duffy & Prendergast Consolidated Opposition to Petitions for Reconsideration (“Blooston Opposition”) at 3-5; BRS Rural Advocacy Group Consolidated Opposition to and Comments in Support of Petitions for Reconsideration (“Rural Group Opposition”) at 3-7; Opposition of SBC Communications Inc. to Petitions for Reconsideration (“SBC Opposition”) at 3-8; Wireless Communications Association International, Inc. Consolidated Opposition to Petitions for Reconsideration (“WCA Opposition”) at 45-47.

³ See Petition for Reconsideration of C&W Enterprises, Inc. (“C&W Petition”) at 5; Petition for Reconsideration of Cheboygan-Otsego-Presque Isle Educational Service District/PACE Telecommunications Consortium (“COPIES/PACE Petition”) at 4-5; Petition for Reconsideration of Digital Broadcast Corporation (“DBC Petition”) at 5-6; Petition for Reconsideration of SpeedNet, L.L.C. (“SpeedNet Petition”) at 4-5; Petition for Reconsideration of Wireless Direct Broadcast System (“WDBS Petition”) at 4-5.

⁴ See Consolidated Opposition to Petitions for Reconsideration of Luxon Wireless Inc. (“Luxon Opposition”) at 5-6; Consolidated Opposition to Petitions for Reconsideration of Nextel Communications (“Nextel Opposition”) at 14-20; Sprint Consolidated Opposition to Petitions for Reconsideration (“Sprint Opposition”) at 6; WCA Opposition at 30-34.

⁵ See BellSouth Opposition at 10-12.

spectrum leases.⁶ Neither CTN/NIA nor IMWED, the only party supporting CTN/NIA, provides any justification for reinstating the cap.⁷

IMWED's view that a cap will preserve flexibility to accommodate changing uses and growth of EBS simply is wrong. The problem IMWED cited – the complexity of renegotiating leases premised on video services only⁸ – illustrates the need to preserve parties' additional flexibility in setting lease terms. This flexibility will be enhanced, not hindered, by eliminating artificial barriers that prevent licensees and lessees from freely negotiating lease terms.

IMWED's claim that a lessee's investment would not be jeopardized in light of existing policies that permit lessees to renew leases after the 15-year term expires is belied by IMWED's own efforts to eliminate purchase option rights⁹ – another proposal that was universally criticized.¹⁰ Read together, IMWED would reduce lease terms to 15 years without affording the lessee any purchase option rights. Its claims that this outcome would not reduce flexibility or harm commercial investment in EBS are unsupported by the facts and are thus unreliable.

3. The Commission should adopt measures to decrease the potential for interference from pre-transition operations. The record demonstrates the need to balance the interests of BRS/EBS operators deploying services prior to a transition with

⁶ See Petition for Reconsideration of the Catholic Television Network and the National ITFS Association ("CTN/NIA Petition") at 20.

⁷ See The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. Consolidated Opposition to Petitions for Reconsideration ("IMWED Opposition") at 15-16.

⁸ See *id.* at 16.

⁹ See IMWED Petition for Reconsideration at 9-10.

¹⁰ See Consolidated Opposition to Petitions for Reconsideration of C&W Enterprises, Inc. at 3; Consolidated Opposition to Petitions for Reconsideration of Digital Broadcast Corporation at 2; Luxon Opposition at 5; Nextel Opposition at 25; Consolidated Opposition to Petitions for Reconsideration of SpeedNet, L.L.C. at 3; Sprint Opposition at 3; Consolidated Opposition to Petitions for Reconsideration of Wireless Direct Broadcast Systems at 3; WCA Opposition at 41-43.

those of incumbent licensees concerned about the potential for harmful interference to their existing operations.¹¹ WCA identified important elements that should be considered to expand the framework conceived by CTN/NIA, and BellSouth endorses any solution that will help achieve the appropriate balance.¹² BellSouth believes that any rule the Commission adopts should contain two essential statements.

First, any operator that launches service under the geographic licensing rules prior to a transition should have no right to object to a reasonable Transition Plan initiated by another licensee on the basis of the operator's investment or established subscriber base. Such a provision would confirm the right to launch service prior to a transition, recognize the operator's understanding that a subsequent proponent could propose a reasonable transition plan at odds with the operator's system, and acknowledge that the operator may need to modify its system based on the proponent's plan.

Second, at least 30 days before launching its service pre-transition, the operator should provide co-channel licensees in a neighboring GSA, adjacent-channel licensees in the same GSA, and the holder of the BTA authorization for the neighboring BTA with notice that it will be commencing operations. Such notice will provide licensees with information about who to contact in case interference arises so that the party causing the interference can take remedial action.¹³

4. The Commission should adopt Basic Trading Areas as the baseline transition area and extend the transition period. The record reflects overwhelming support for changing the area that licensees must transition from Major Economic Areas

¹¹ Compare CTN/NIA Petition at 12-14 with Opposition to Petitions for Reconsideration of Clearwire Corporation ("Clearwire Opposition") at 14-15.

¹² See WCA Opposition at 14-16.

¹³ See Luxon Opposition at 6-7.

(“MEAs”) to Basic Trading Areas (“BTAs”).¹⁴ In light of this anticipated change, BellSouth and others supported WCA’s request that the transition period should end 30 months following adoption of BTAs as the transition area.¹⁵

Only NY3G asked the Commission to retain its rules, merely reiterating the Commission’s purported rationale.¹⁶ Other parties in this proceeding clearly demonstrated that using MEAs would be too costly, too complicated and are contrary to the Commission’s objectives for rapid transitions. They also showed that using BTAs would promote expeditious transitions throughout the country.¹⁷ The record is crystal clear – the Commission should change the transition area, and must allow a reasonable period from the effective date of that rule change for parties to complete transitions.

5. The Commission should adopt rules that define a “proponent” according to how much spectrum the operator holds in the market to be transitioned. Nextel observed that the Commission’s failure to define who a transition “proponent” may be creates uncertainty and delay in the transition process while a “first mover” determines the identity of any potential co-proponents.¹⁸ Nextel asserted that the licensee that files its transition plan first should be deemed the proponent, but suggested that if the Commission wants to encourage multiple proponents, it should permit entities holding the most licensed and leased spectrum to have preferred rights in the event prospective proponents cannot agree on a transition plan within 90 days.¹⁹ Clearwire opposed this

¹⁴ See, e.g., Rural Group Opposition at 7-9; IMWED Opposition at 2; Response of Illinois Institute of Technology to Petitions for Reconsideration (“IIT Response”) at 3-6; Luxon Opposition at 8.

¹⁵ See BellSouth Opposition at 15-16; Sprint Petition for Reconsideration at 2-4; WCA Petition for Reconsideration at 12-13.

¹⁶ See Comments in Response to Petitions for Reconsideration of NY3G Partnership at 7.

¹⁷ See *id.* at 10.

¹⁸ See Nextel Communications Petition for Reconsideration (“Nextel Petition”) at 11-14.

¹⁹ See *id.* at 14.

plan on grounds that the “first mover” is the party most interested in rapidly transitioning.²⁰

BellSouth submits that both of these models are flawed because they are both based on the unsupported presumption that the “first mover” is most interested in transitioning quickly or would be the “best” proponent. Moreover, if the Commission changes the transition area to BTAs, the Commission need not encourage co-proponents because the transition likely will proceed more efficiently with a single proponent.

Instead, BellSouth proposes a variation on Nextel’s plan that would establish a 30-day period following the filing of the Transition Notice during which other licensees and lessees could express their willingness to be the proponent. If all interested parties are unable to agree on a Transition Plan within 90 days, then the entity holding the most licensed and leased spectrum expressing its desire to participate in the transition would be deemed the “proponent.” If, on the other hand, that entity decided that it did not want to be the proponent, then the “first mover” would be declared the “proponent.”

The benefits of this proposal include: (a) providing for a short period of time to determine the proponent with the most at stake, which serves the public interest by eliminating potential counterproposals and disputes that could delay or create uncertainty throughout the transition process; (b) ensuring that the transition proceeds quickly because the largest spectrum holder must be involved early in the process; (c) providing the entity with the largest spectrum holdings an incentive to move forward if there is no agreement because it would have the most to gain and the most to lose, and thus should be afforded rights that acknowledge the relative significance of its spectrum holdings;

²⁰ See Clearwire Opposition at 11.

and (d) properly rewarding the “first mover” if the largest spectrum holder for any reason elects not to be a proponent.

6. *The Commission should adopt rules penalizing licensees that do not respond to pre-transition data requests.* HITN²¹ and IMWED²² oppose WCA’s view that a licensee that does not timely respond to a pre-transition data request should lose its rights to compensation for migrating programming tracks and for replacement downconverters.²³ Consistent with the Commission’s objectives to transition markets expeditiously, BellSouth believes that WCA’s proposal creates an appropriate incentive for licensees to respond to data requests and prevents those that do not respond from delaying or creating uncertainty in the transition.

7. *The Commission should not require a proponent to specify the transition completion date when it files its Initiation Plan.* Only IMWED²⁴ opposed petitions²⁵ asking the Commission to eliminate the requirement that a proponent specify in its Initiation Plan the date when its transition will be completed. IMWED’s concern about the importance of knowing when post-transition services can begin is already addressed by Section 27.1232(b)(1)(vi), which requires specification of the expected transition completion date in the Transition Plan that is filed after sufficient information has been collected and a better estimate can be given. IMWED’s opposition should be rejected, and the Commission should grant requests to modify the rule.²⁶

²¹ See Consolidated Comments of HITN Regarding Broadband Services Order Petitions for Reconsideration (“HITN Comments”) at 3.

²² See IMWED Petition at 7-8.

²³ See WCA Petition at 18. See also BellSouth Opposition at 20 (no objection to 21-day response deadline).

²⁴ See IMWED Opposition at 8-9.

²⁵ See Sprint Petition for Reconsideration at 9-10.

²⁶ See BellSouth Opposition at 20.

8. *The Commission should permit a proponent one opportunity to withdraw its*

Transition Plan. IMWED alone opposes a proposal that would permit a proponent to withdraw its Initiation Plan without penalty.²⁷ HITN does not object to the proposal, but suggests that the Commission implement rules to discourage place-holder filings.²⁸ These views ignore the likelihood that a proponent will not want to re-start the transition process, but rather will be forced to do so because the plan relied on incorrect information or circumstances beyond the proponent's control caused the initial plan to be unacceptable. The potential for lost investment and time should be incentive enough to discourage abuse of the transition process. Nevertheless, BellSouth is not opposed to permitting a proponent to withdraw its Initiation Plan without penalty prior to the end of the Transition Planning Period. After that date, any proponent that withdraws its Initiation Plan would not be permitted to file another Initiation Plan.

9. *The Commission should adopt transition "safe harbors" to accommodate*

certain EBS licensees. IMWED apparently misinterprets the proposed transition "safe harbor" (Safe Harbor #3) that would assure EBS licensees entitled to more than one programming track that they would retain the same number of programming tracks post-transition.²⁹ Short of reducing the number of programming tracks, this "safe harbor" would ensure that the licensee would not suffer any loss by giving the proponent a choice of a second MBS channel or upgrading the single MBS channel to digital technology to permit the licensee to provide a comparable number of programming tracks. To the

²⁷ See IMWED Opposition at 9. Though IMWED opposes the ability of a proponent to submit "multiple" Initiation Plans, its references to WCA and Nextel petitions suggest that it actually opposes their proposals to permit a proponent to withdraw and then submit a new Initiation Plan.

²⁸ See HITN Comments at 5-6.

²⁹ See IMWED Opposition at 5 (stating the "safe harbor" as involving circumstances where the EBS licensee "sought more than one mid-band programming track," rather than instances where the EBS licensee is entitled to additional programming tracks under Section 27.1233(b)).

extent these alternatives are not attractive to the EBS licensee, it can negotiate different provisions with the transition proponent. Proposed Safe Harbor #3 should be adopted.

IMWED's proposed alternative to Safe Harbor #4 should be rejected because it would unfairly prejudice licensees that are not fortunate enough to hold EBS channel 4.³⁰ The "safe harbor" proposed by WCA, CTN/NIA and others would allocate the MBS channel *pro rata* so as to not unfairly reward one licensee to the detriment of others, and would not preclude EBS licensees from agreeing to a different distribution of their spectrum either in the secondary market or as part of the transition. IMWED's plan is unfair to EBS licensees and transition proponents, and should be rejected.

The Commission also should adopt the "safe harbor" proposed by WCA for EBS channels used as studio-to-transmitter links (Safe Harbor #9).³¹

10. The Commission should modify the transition cost recovery rules. The record shows that the Commission should reject a number of proposals concerning reimbursement of transition costs. First, as BellSouth³² and others³³ demonstrated, fairness dictates that reimbursement should be required only after the beneficiaries commence service and not before as urged by Clearwire.³⁴ Second, licensees should have at least 60 days following invoicing to make the reimbursement.³⁵ Third, BellSouth agrees that the Commission correctly focused on the commercial use of the spectrum, and

³⁰ See *id.* at 5-6. BellSouth is aware of cases where, as part of settlements of mutually exclusive applications, EBS channels 1 and 2 were assigned to one licensee and channels 3 and 4 were assigned to the other licensee. At the time of these settlements, it could not have been known that the band plan would treat these channels differently as part of a reconfiguration of the spectrum.

³¹ See WCA Petition at 24.

³² See BellSouth Opposition at 22.

³³ See Nextel Opposition at 9-10; Sprint Opposition at 11-14; WCA Opposition at 17-19.

³⁴ See Petition for Partial Reconsideration of Clearwire Corporation at 7-8.

³⁵ See BellSouth Opposition at 22; Nextel Opposition at 8-9.

thus should reject IMWED's proposal to exempt non-profit licensees from reimbursement obligations.³⁶

BellSouth agrees with WCA that an EBS licensee that self-transitions should be entitled to reimbursement only for migration costs for the number of programming tracks it would be entitled to under a proponent-driven transition.³⁷ Also, the Commission should ensure that an EBS licensee that self-transitions is not entitled to reimbursement for costs associated with "gold plating" its system.³⁸

11. The Commission should adopt self-effectuating "opt out" criteria and permit licensees that "opt out" of a transition to initiate transitions. BellSouth³⁹ and a large number of other parties⁴⁰ demonstrated that the Commission should adopt the Coalition's proposal to permit certain multichannel video programming distributors ("MVPDs") to "opt out" of a transition upon satisfying specific criteria. BellSouth reiterates its support for the two "opt-out" criteria proposed by the Coalition.⁴¹ Only IMWED argues in favor of a waiver process that would examine the potential impact of interference on the transitioning market.⁴²

³⁶ See IMWED Opposition at 11.

³⁷ See WCA Opposition at 20.

³⁸ See *id.* at 20-21.

³⁹ See BellSouth Opposition at 17-18.

⁴⁰ See, e.g., WCA Petition at 26-30; Opposition and Comments Regarding Petitions for Reconsideration of Choice Communications, LLC at 2; Comments in Support of Petitions for Reconsideration of the National Telecommunications Cooperative Association at 2; Nextel Opposition at 21; Sprint Opposition at 9-10.

⁴¹ The Coalition proposed that a BRS or EBS licensee could "opt out" of a transition if it or its affiliate is: (a) an MVPD that uses the 2.5 GHz band to provide service to at least five percent of the households within its GSA; or (b) part of a system that deployed digital technology on more than seven channels as of October 7, 2002. Stations collocated with any licensee electing to "opt out" also would be eligible to "opt out." See "A Proposal for Revising the MDS and ITFS Regulatory Regime," filed October 7, 2002 by the Wireless Communications Association International, Inc., the National ITFS Association and the Catholic Television Network ("Coalition Proposal") at Appendix B, p.17, and Supplement to Coalition Proposal filed November 14, 2002 at 4-5. BellSouth's support of the Coalition's criteria should not be construed as an endorsement of proposals of other parties to add a third criterion, which have been opposed by WCA, Nextel and Sprint. See WCA Opposition at 26-30; Nextel Opposition at 21-23; Sprint Opposition at 10.

⁴² See IMWED Opposition at 17.

IMWED's argument misses the point. A waiver process would indefinitely delay the transition while the Commission analyzes each waiver request and the interference impact that maintaining MVPD operations would have on the transitioning system. Even assuming the Commission could develop explicit waiver standards that could be applied consistently in every situation, a waiver process creates uncertainty for both the MVPD, which has complied with the Commission's rules and developed a system serving a critical mass of customers, and the transition proponent, which requires accurate information to plan its transition.

BellSouth recognizes that the process for "opting out" has not been fully developed in this proceeding, and proposes that any licensee that "opts out" of a transition should retain the flexibility to participate in a transition or self-transition. BellSouth and other licensees must be able to preserve existing operations and retain flexibility to transition in the future, yet support the ability of licensees to transition. To establish a comprehensive process, BellSouth supports the views of WCA⁴³ and WATCH TV⁴⁴ in combination with certain elements described in BellSouth's Opposition and below. The following process should be adopted:

- Within 30 days of the effective date of new rules adopted in this proceeding, a licensee eligible to "opt out" under pre-established criteria (and any co-located licensee) would file a certification with the Commission demonstrating "opt-out" eligibility.⁴⁵
- After reviewing the "opt-out" certifications, the Commission would publish a list of those licensees deemed eligible to "opt out" of a transition.⁴⁶ Any licensee filing an "opt-out" certification would be required to respond to data requests so that the transition proponent may either "plan around the 'opting out' licensee, or

⁴³ See WCA Petition at 26-27.

⁴⁴ See Petition for Reconsideration of W.A.T.C.H. TV Company ("WATCH TV Petition") at 6.

⁴⁵ BellSouth reiterates its support for the "opt-out" criteria proposed by the Coalition. See BellSouth Opposition at 16.

⁴⁶ See WCA Petition at 26-27; WATCH TV Petition at 6.

seek solutions that would allow the licensee to participate in the transition process consistent with its MVPD plans.”⁴⁷

- On or before the 30th day of the Transition Planning Period, any licensee deemed eligible to “opt out” could either participate in the transition or file a notice with the Commission that it is “opting out” of a transition. Of course, up until that point, the eligible licensee and the proponent could continue to negotiate to determine whether and to what extent the eligible licensee’s concerns can be addressed.
- At any time before the end of the period for filing an Initiation Plan, the “opting out” licensee could itself initiate a transition. The exercise of this right would expedite transitions – a licensee that “opts out” but is subsequently able to transition should not be required to wait – perhaps years – for the self-transition period in order to transition. Such a result would be contrary to the public interest in having access to advanced wireless services. Moreover, because “opt out” rights would generally be exercised when the proponent is seeking to transition an adjacent market, it is likely that there would be less interference because high-power operations would be replaced with low-power operations.
- During the self-transition period, any licensee that did not participate in a transition, including any licensee that “opted out,” would be permitted to transition its channels.⁴⁸

This proposal affords prospective proponents with advance notice of those licensees that would be eligible to “opt out” of a transition and establishes a negotiation period during which the proponent and licensees can address any differences. If those differences cannot be resolved, the proponent can move forward. The “opting out” licensee would have the right to subsequently transition, without impinging on the rights of the proponent or other licensees that are part of the transition.

⁴⁷ BellSouth Opposition at 18.

⁴⁸ See BellSouth Opposition at 19. BellSouth opposes IMWED’s suggestion that licensees be permitted to self-transition prior to the Initiation Plan deadline. See IMWED Opposition at 7. A licensee that does not agree with an Initiation Plan can offer a counterproposal instead of embarking on a self-transition process that could result in interference to the operations of other licensees. IIT’s proposal to permit simultaneous self-transitions under an agreement also should be rejected in favor of the existing process that encourages parties to join in a transition. See IIT Response at 9.

12. The Commission should adopt changes to the antenna height

benchmarking rule. BellSouth generally supports the changes to the antenna height benchmarking rules proposed by Nextel, with certain refinements that properly balance the interests of geographically adjacent co-channel licensees by requiring prompt action to remedy any interference impact that exceeding the benchmark may have on customers.⁴⁹ BellSouth supports the change to Section 27.1221 that WCA is proposing in its reply that is being filed today.

13. The Commission should retain the existing channel plan for guardbands.

BellSouth opposes IMLC's proposal to change the channel assignments for the guardband.⁵⁰ As WCA correctly observed, adoption of IMLC's proposal would undermine the purpose of guardband, which is to buffer the MBS from the LBS and UBS, and potentially lead to harmful interference.⁵¹

14. The Commission should prohibit licensees from exceeding the signal strength limit at their GSA borders unless they obtain consent from affected licensees.

In the absence of consent from co-channel licensees in a neighboring GSA, adjacent-channel licensees in an overlapping GSA, and the holder of the BTA authorization for the neighboring BTA, the Commission should prohibit licensees from exceeding the signal strength limits at their GSA borders. If the Commission does not amend Section 27.55(a)(4) to require such prior consent, then the Commission must ensure that the licensee that desires to exceed the signal strength limit provides notice to all affected parties. If no agreement for continuing operations is reached, the Commission should

⁴⁹ See Nextel Petition at 18-19 and Appendix A.

⁵⁰ See Petition for Reconsideration of the Independent MMDS Licensee Coalition at 5-6.

⁵¹ See WCA Opposition at 59-50.

strictly enforce the provisions of Section 27.55(a) that require a licensee to comply with the signal strength limits once the affected licensees begin providing service.

15. The Commission should not require a “documented complaint” in order to eliminate interference caused by base stations. The Commission should adopt the proposals of WCA and Nextel to require a licensee to employ a more stringent spectral mask to more effectively manage out-of-band emissions from base stations in overlapping GSAs.⁵² In so doing, the Commission should reject Clearwire’s claim that any additional attenuation should occur only upon securing a favorable ruling on a “documented complaint.”⁵³ Unlike cases where documented complaints are appropriate, interference to base stations would have an extremely adverse affect on operations to hundreds of customers, and any interference thus should be remedied without enduring an exhaustive complaint process.

⁵² See WCA Petition at 40-44; Nextel Petition at 26-30, Appendix A.

⁵³ See Clearwire Opposition at 3-5.

Conclusion

BellSouth urges the Commission to amend its rules as set forth in this Reply and in its Consolidated Opposition, Comments and Reply Comments in this proceeding, and to reject the proposals of other petitioners and commenters to the extent discussed above.

Respectfully submitted,

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March 9, 2005

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Certificate of Service

I, Kenneth Wolin, Legal Assistant at the firm of Rini Coran, PC, do certify that I have caused a copy of the foregoing Consolidated Reply to be sent this 9th day of March, 2005 via First Class United States mail, postage prepaid to the following parties:

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